

regulations.⁴⁵ The Advisory Circulars, the FAA recommendations for painting and lighting of antenna structures that are mandatory under the FCC Rules, impose obligations with respect to notification of modifications that conflict with Section 17.23.⁴⁶ Furthermore, the Commission should work with the FAA to adopt the FCC's 20-foot rule exemption, a proposal made in the 2000 Biennial Review.⁴⁷ Until the Commission takes further action, the tower siting rules in Part 17 will continue to be misleading and confusing.

7. PART 20 – 911 SERVICES

The Commission should modify Section 20.18 to reflect changes it has made to its rules with respect to the deployment of Phase I and Phase II Enhanced 911 (“E-911”) services. Specifically, the Commission’s cost recovery rules now provide for a negotiation process between carriers and PSAPs that is not consistent with Section 20.18.⁴⁸ The Commission should modify the language requiring carriers to deploy network-based or handset-based location technology within six months of a PSAP request to permit carriers and PSAPs to negotiate a mutually-agreed upon implementation period. In addition, the Commission should modify its

⁴⁵ See *id.* at nn. 47-49 (stating that Sections 17.45, 17.48, 17.53, 17.54, 17.4, 17.57 warrant review).

⁴⁶ See CTIA’s Biennial Review 2000 Reply Comments at 4-6.

⁴⁷ See Cingular’s Biennial Review 2000 Comments at 7. See also 47 CFR § 17.14(b).

⁴⁸ See 47 CFR § 20.18(d) (stating that a licensee must provide Phase I service “within 6 months of a PSAP request”); 47 CFR § 20.18 (f), (g) (stating that a licensee must provide Phase II service “within 6 months of a PSAP request”).

rules to affirm that the six-month implementation period is tolled while a PSAP assembles supporting documentation or during a “readiness dispute.”⁴⁹

The Commission also should amend its E-911 rules to account for the widespread use of non-initialized (or more properly, non-subscribed) phones. While the Commission’s E-911 mandate requires CMRS carriers to “transmit all wireless 911 calls without respect to their call validation,”⁵⁰ the Phase II accuracy requirements and deployment measures required under Section 20.18 fail to account for calls from non-subscribed calls to a PSAP that cannot be validated. As CTIA stated in comments responding to the Commission’s *Further Notice of Proposed Rulemaking*, the Commission must clarify its 911 rules to reflect the technical obstacles to providing the enhanced features of E911 to non-subscribed handsets.⁵¹

Finally, the Commission should modify sections 20.18(f), (g), (h) and (i) of the Commission’s rules⁵² to clarify that any provider of commercial mobile services subject to those sections may choose to comply with the requirements of any FCC order granting a waiver of these sections.

⁴⁹ See CTIA Comments on Cingular Petition for Reconsideration, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (Jan. 18, 2002).

⁵⁰ 47 CFR § 20.18(b).

⁵¹ See CTIA’s Comments and Reply Comments on the Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Further Notice of Proposed Rulemaking*, CC Docket No. 94-102 (Aug. 8, 2001).

⁵² 47 C.F.R. 20.18(f), (g), (h), and (i).

8. PART 22, SUBPART C – OPERATIONAL AND TECHNICAL REQUIREMENTS; AND SUBPART H – CELLULAR RADIOTELEPHONE SERVICE

The Commission still has not acted on its 2000 Biennial Review staff recommendations to conduct a comprehensive review of the cellular service rules in Part 22.⁵³ As the Commission has acknowledged, the wireless marketplace is drastically different than what it was when the Part 22 rules were promulgated, and the Commission should eliminate unnecessary cellular rules in view of the introduction of new technologies and the increased competition between wireless carriers.

In the last Biennial Review, the Commission committed to “undertake a comprehensive review of the Part 22 cellular rules as well as other portions of Part 22 that have not received recent scrutiny,” based on the fact that CMRS providers, including those licensed under Part 22, “operate in an environment that is marked by significant and increasing competition in mobile telephony.”⁵⁴ The Commission, however, has failed to deliver on its commitment to review the Part 22 rules. There is no need to address the pending issues in the 2002 Biennial Review; the Commission should resolve the following issues, using the *Fox* standard, as part of the still-pending 2000 review.

CTIA urges the Commission to adhere to a policy of regulatory parity and eliminate unnecessary regulatory burdens imposed upon cellular service providers. For example, Section

⁵³ See Staff Report at 32.

⁵⁴ See Staff Report at 39; *See id.* at 38.

22.303 requires cellular providers to mark every transmitting facility with a station call sign,⁵⁵ and Section 22.367 imposes a vertical polarization requirement on cellular licensees⁵⁶— obligations that are not imposed upon other CMRS providers. CTIA also urges the Commission to transfer the management of the assignment of cellular system identification numbers (SIDs), *i.e.*, to CTIA’s CIBERNET subsidiary, and amend Section 22.941 accordingly.⁵⁷ The Commission also should clarify Section 22.919 to allow carriers to use alternative mechanisms to the Electronic Serial Numbers (“ESN”), *i.e.*, SIM cards. In the alternative, the Commission should eliminate the provision since there is no equivalent of ESN requirement for broadband PCS.⁵⁸ Finally, the Commission should eliminate the Cellular Cross-Interest Rule for Rural Service Areas (“RSA”) as it has done for Metropolitan Statistical Areas (“MSA”).⁵⁹ As Cingular Wireless and Dobson Communications stated in their recent Petitions for Reconsideration, a separate rural cross ownership rule is not needed -- the case-by-case competitive analysis applied to all other CMRS transfers will protect the public interest.⁶⁰

⁵⁵ 47 CFR § 22.303. *See also* Verizon Wireless Biennial Review 2000 Comments at 8 (explaining that Part 22 should allow either vertical or horizontal polarization).

⁵⁶ 47 CFR § 22.367(a). *See also* Verizon Wireless Biennial Review 2000 Comments at 8.

⁵⁷ 47 CFR § 22.941. *See* CTIA Biennial Review 2000 Comments and Reply Comments at 7-8.

⁵⁸ 47 CFR § 22.919.

⁵⁹ *See* 47 CFR § 22.942 (limiting the interests licensees can hold in channel blocks in an area).

⁶⁰ *See* Petitions for Reconsideration of Action in Rulemaking Proceeding Report No. 2540, filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural

While CTIA applauds the Commission's efforts to streamline the licensing process for wireless carriers and its establishment of a Universal Licensing System ("ULS") database,⁶¹ the Commission has overlooked certain regulations, such as the requirement in Section 22.953 to file both full-sized maps and reduced maps with minor modifications, that are inconsistent with the policies of ULS implementation. Accordingly, the Commission should eliminate such regulations.⁶²

9. PART 24 – PERSONAL COMMUNICATIONS SERVICES, SUBPART B – APPLICATIONS AND LICENSES

Principles of regulatory symmetry require the Commission to treat comparable services the same and that any difference in regulation must be based upon relevant differences in circumstances or competition. In 1999, CTIA asked the Commission in a Petition for Rulemaking to amend certain provisions of Part 24 to make the PCS license renewal process consistent with the cellular renewal process.⁶³ CTIA raised this issue in the Commission's 2000

Cellular Corporation, and the Petition for Reconsideration filed by Cingular Wireless LLC, WT Docket No. 01-14 (Feb. 13, 2002).

⁶¹ See Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order*, WT Docket No. 98-20 (1998); Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20 (1999).

⁶² 47 CFR § 22.953.

⁶³ See CTIA's Petition for Rulemaking to Extend the Part 22 Cellular Renewal Rules to the Part 24 Personal Communications Service (Dec. 21, 1999) (stating that when the Commission adopted the PCS renewal rules it expressly stated that it was adopting a ten year license term and "provisions regarding renewal expectancy that currently apply to the cellular

Biennial Review proceeding, and raises it again in this Petition. Section 24.16 of the PCS rules does not contain the same two-step process for resolving renewal challenges that is included in the cellular renewal rules.⁶⁴ Since the issue continues to be relevant, the Commission should modify the rules governing the PCS license renewal process as part of the still-pending 2000 review and in accordance with the legal standard of review appropriately defined in the *Fox* decision.

10. PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

The Commission has taken significant steps to streamline the international reporting requirements found in Part 43 of its Rules.⁶⁵ The Commission reduced the regulatory burden on non-dominant carriers by clarifying the contract filing requirement in Section 43.51⁶⁶ and Section 20.15(d) for CMRS providers. Consistent with the Commission's deregulatory approach, and the increased competition in international markets, the Commission should eliminate Section 43.53, a reporting requirement for the transmission or reception of international telegraph

service”), *citing* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, Gen. Docket No. 90-314 at ¶131 (1993).

⁶⁴ See 47 CFR § 24.16 (PCS renewal process); 47 CFR §§ 22.935-40 (Cellular renewal process).

⁶⁵ Verizon Wireless, Cingular, and others supported the Commission decision to commence a proceeding to consider the international reporting requirements. See Verizon Wireless Comments at 2; Cingular Comments at 3, filed October 10, 2000.

⁶⁶ The Commission amended Section 43.51 so that the reporting requirement applies solely to carriers classified as dominant for reasons other than foreign affiliation; and carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.

communications.⁶⁷ As demonstrated by parties commenting in the 2000 Biennial Review proceeding, this provision is no longer necessary, and the issue remains ripe for decision.

The Commission also should eliminate Section 43.61, which requires carriers to report actual traffic and revenue data for international traffic and overseas traffic (between the United States and U.S. territories), as a duplicative obligation to carriers holding Section 214 authorizations.⁶⁸ Furthermore, the Commission should eliminate the International Circuit status report requirement in Section 43.82 since the data submitted on a circuit basis is minimal in comparison to the traffic provided by facilities-based and wireline-based international carriers.⁶⁹

11. PART 52 – NUMBERING

The Commission has assigned abbreviated dialing codes, or N11 service codes, to enable callers to connect to a location that otherwise would be accessible only via a seven or ten-digit telephone number.⁷⁰ CTIA strongly urges the Commission to modify its existing rules for these services to allow the competitive offering of 211-, 311-, and 511-services.

⁶⁷ 47 CFR § 43.53; 43.61; See 47 CFR § 63.21 (below)

⁶⁸ 47 CFR § 43.61.

⁶⁹ 47 CFR § 43.82.

⁷⁰ The Commission has established the following N11 code-assignments for the eight N11 codes: 211: Assigned for community information and referral services; 311: Assigned nationwide for non-emergency police and other government services; 411: Unassigned, but used virtually nationwide by carriers for directory assistance; 511: Assigned for traffic and transportation information; 611: Unassigned, but used broadly by carriers for repair service; 711: Assigned nationwide for access to Telecom Relay Services; 811: Unassigned, but used by local exchanged carriers for business office use; 911: Unassigned, but mandated by Congress for use nationwide for emergency services.

As explained in CTIA's Petition for Rulemaking, the Commission's mandate for 511 travel services provided by "a governmental entity" inhibits carriers from competing in these services and from designing a service based on customer demand.⁷¹ The 511-experiment during the Salt Lake City Olympics has only reinforced these concerns. After turning up 511 service for the Olympic events, a major wireless received less than thirty 511-calls in Utah during the six week Olympic period. In a recent Order, the Commission committed to reexamine in 2005 its assignment of the 511 and 211 service codes, access to traveler information services and access to community information and referral services.⁷² The Commission should expedite this review and modify its rules to account for competitive CMRS implementation.

12. PART 52, SUBPART C – NUMBER PORTABILITY

To the extent that any of the provisions of Section 52.31 of the Commission's Rules are not addressed by the Commission's response to the pending Verizon Wireless Petition for Forbearance (filed pursuant to Section 10 of the Communications Act), the Commission should apply the *Fox* standard, and eliminate the local number portability ("LNP") mandate for CMRS carriers.⁷³ As explained in the Verizon Forbearance Petition, the FCC imposed the portability

⁷¹ CTIA's Petition for Reconsideration, CC Docket No. 92-102 (March 12, 2001).

⁷² See Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide; The Use of N11 codes and Other Abbreviated Dialing Arrangements, *Third Report and Order and Order on Reconsideration*, CC Docket No. 92-105 (July 31, 2001) at ¶53 (stating that the "Commission shall reexamine the deployment of 511 for access to traveler information services, and of 211 for access to community information and referral services five years after the effective date of this *Third Report and Order*).

⁷³ See Verizon Wireless Petition for Forbearance, WT Docket No. 01-184 (filed August 2, 2001) ("Verizon Forbearance Petition").

requirement upon CMRS providers with no showing of competitive justification and improperly linked the ability of wireless carriers to port with the technical solution required for thousands-block number pooling.⁷⁴ CTIA again urges the FCC to forbear from the LNP mandate, or in the alternative, to grant a transition period to avoid the very real risks to the network integrity caused by the flash-cut simultaneous deployment of two mandates: porting and pooling.

13. PART 63; SECTION 63.21 – CONDITIONS APPLICABLE TO ALL INTERNATIONAL SECTION 214 AUTHORIZATIONS

As explained above, the Commission should eliminate Section 63.21, which requires carriers holding Section 214 authorizations to file international interexchange service reports, or a Section 43.61 report.⁷⁵ In the 2000 Biennial Review proceeding, Verizon Wireless explains that Section 63.21, which forces carriers to file annual reports of overseas traffic for all international Section 214 authorizations, has neither been justified by the Commission as necessary in the public interest nor is it beneficial.⁷⁶ In the alternative, the Commission should modify the rule by narrowing the scope of Section 43.61 and clarify that only facilities-based carriers are required to file Section 43.61 reports.

⁷⁴ See Verizon Forbearance Petition at 15-30, Appendix A.

⁷⁵ 47 CFR § 63.21(d).

⁷⁶ See Verizon Wireless Comments at 6 (stating “there is no valid regulatory purpose that justifies requiring international CMRS resellers to file the Section 43.61 report”).

14. PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

On remand from the Tenth Circuit's decision,⁷⁷ the Commission recently issued a *Clarification Order and Second Further Notice of Proposed Rulemaking* addressing the obligation of carriers under Section 222 of the Telecommunications Act of 1996 to protect customer proprietary network information ("CPNI"). While the Commission takes the position that the Tenth Circuit's vacatur applied only to a single provision of the CPNI rules, 47 C.F.R. 64.2007(c), the court vacated the entire Section 64.2007 rulemaking as constitutionally inadequate.⁷⁸ As CTIA explained in its Comments,⁷⁹ the Commission must eliminate all of its rules on the use of CPNI that were vacated by the Tenth Circuit.⁸⁰ Furthermore, in light of the Tenth Circuit's vacatur Order, the Commission should abandon its prior approach to CPNI rules, and adopt modified rules based on the Federal Trade Commission's Fair Information Practices.⁸¹

⁷⁷ See *U.S. West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 147 L. Ed. 2d 248, 120 S. Ct. 2215 (2000).

⁷⁸ *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, Clarification Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149 (Rel. Sept. 7, 2001) ("*Clarification Order*") at 7 (Section 64.2007(c), according to the Commission, is "the only provision inextricably tied to the opt-in mechanism.").

⁷⁹ CTIA Comments (Nov. 1, 2001).

⁸⁰ See 47 CFR §§ 64.2005; 64.2007.

⁸¹ The FTC's Fair Information Practices are set out in CTIA's *Location Petition*. See *In the Matter of Petition of the Cellular Telecommunications & Internet Association Petition for a Rulemaking to Establish Fair Location Information Practices*, Notice of Request for

**15. PART 90 – PRIVATE LAND MOBILE RADIO SERVICES - SUBPART H –
POLICIES GOVERNING THE ASSIGNMENT OF FREQUENCIES**

Section 90.175 sets forth the general frequency coordination requirements for licensees regulated by Part 90 of the Commission's Rules. Section 90.175(i)(8)⁸² exempts applications for certain frequencies listed in the Specialized Mobile Radio ("SMR") tables contained in Sections 90.617 and 90.619 of the Commission's Rules.⁸³ Although Sections 90.617 and 90.619 specifically list the "Upper 200" and "Lower 80" auctioned-over SMR 800 MHz frequencies, SMR "General Category" frequencies (channels 1-150) are not listed in either rule section. Rather, the SMR "General Category" frequencies are listed separately in Section 90.615 of the Commission's Rules.⁸⁴ Due to this apparent oversight, Section 90.175 of the Rules continues to require frequency coordination for applications involving modification of SMR "General Category" licenses even though the rationale for such coordination of this auctioned-over band has ended. Therefore, the Commission should clarify subparagraph (8) of Section 90.175(i) to include a reference to Section 90.615 of the Rules. Additionally, the Commission should clarify Section 90.175(i) to specifically exclude applications only deleting a frequency from coordination. The deletion of all frequencies from a license (i.e., canceling a license) does not require coordination, and with the implementation of the Commission's Universal Licensing System coordination of frequency deletions is unnecessary and unduly burdensome.

Comments, DA –1-696, WT Docket No. 01-72 (Mar. 16, 2001).

⁸² 47 CFR § 90.175(i)(8).

⁸³ 47 CFR §§ 90.617 and 90.619.

⁸⁴ 47 CFR § 90.615.

**16. PART 90 - PRIVATE LAND MOBILE RADIO SERVICES -SUBPART S –
REGULATIONS GOVERNING LICENSING AND USE OF FREQUENCIES IN
THE 806-824, 851-869, 869-901, AND 935-940 MHZ BANDS**

Subpart S of the Commission's Rules contains a number of provisions that are unnecessary, redundant or obsolete. Section 90.621(b)(5) of the Rules permits co-channel licensees to consent to separation between systems less than specified in the Short-Spacing Separation Table contained in 90.621(b)(4)⁸⁵ provided the consenting licensees certify their systems is constructed and operational. This construction certification is duplicative of other constructions requirements and unnecessarily increases delays and reduces spectrum flexibility.

Section 90.629(e) of the Commission's Rules states that as of March 18, 1996, SMR systems are no longer eligible for extended implementation construction periods and provided for a reporting requirement for existing SMR licensees to "rejustify" their extended implementation authorizations in 1996.⁸⁶ The Wireless Telecommunications Bureau approved many of the rejustification filings in 1997⁸⁷ and issued its final Memorandum Opinion and Order in 1999.⁸⁸ Therefore, this section of the Commission's Rules is now obsolete and should be eliminated.

⁸⁵ 47 CFR § 90.621(b)(4) and (5).

⁸⁶ 47 CFR § 90.653.

⁸⁷ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Order* (May 1997) and *Memorandum Opinion and Order* (November 1997).

⁸⁸ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (1999).

Section 90.631(i) of the Commission's Rules is also obsolete.⁸⁹ This rule specifies time periods by which site-specific SMR 900 MHz systems must meet certain loading requirements. The 900 MHz SMR band has been auctioned-over and the timeframe for site-specific SMR 900 MHz systems to meet loading requirements has since expired.

Section 90.653 of the Commission's Rules states that there shall be no limit of the number of systems authorized in a geographic area.⁹⁰ The rule is redundant and no longer serves any regulatory purpose.

The Commission should eliminate the loading requirement in Section 90.658 of the Rules.⁹¹ This rule contains an obsolete reporting requirement for SMR systems licensed before 1993, and no longer applies to any existing licensees.

**17. PART 90 - PRIVATE LAND MOBILE RADIO SERVICES - SUBPART U –
COMPETITIVE BIDDING PROCEDURES FOR 900 MHZ SPECIALIZED
MOBILE RADIO SERVICE; AND SUBPART V – COMPETITIVE BIDDING
PROCEDURES FOR 800 MHZ SPECIALIZED MOBILE RADIO SERVICE**

Sections 90.813 and 90.911 of the Commission's Rules authorize and set forth procedures for 800 MHz and 900 MHz geographic area licensees to partition and disaggregate their spectrum licenses.⁹² The Commission should modify Sections 90.813(f) and 90.911(f) of the Rules to permit the partitionee/disagregatee, as well as the original licensee, to certify that it

⁸⁹ 47 CFR § 90.631(i).

⁹⁰ 47 CFR § 90.653.

⁹¹ 47 CFR § 90.658.

⁹² 47 CFR § 90.813 (stating rules for partitioned licenses and disaggregated spectrum for 900 MHz licensees); 47 CFR § 90.911 (stating rules for partitioned licenses and disaggregated spectrum for 80 MHz licensees).

will satisfy the construction requirements for the entire market.⁹³ The increased flexibility for geographic area licensees would not affect the Commission's construction requirements for any geographic area license. Additionally, the Commission should modify its rules to permit geographic area licenses to be consolidated and aggregated, as well as partitioned and disaggregated. This rule modification would increase the flexibility for licensing geographic area systems without negatively affecting construction or other licensing requirements.

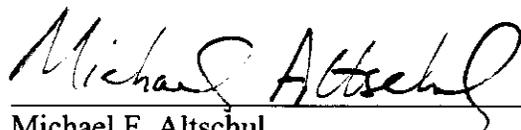
⁹³ 47 CFR §§ 90.911(f); 90.813f) (the current rules allow the disaggregating parties to elect for the original licensee to submit supporting documents for the construction requirements for the entire market).

IV. CONCLUSION

CTIA respectfully submits that the public interest requires that the Commission conduct its 2002 biennial review, on an expedited basis, of *all* regulations affecting CMRS carriers. Moreover, the Commission's review should be guided by the recent Court of Appeals decisions describing the review standard Congress adopted and set forth in Section 11 of the Communications Act. As noted above, CTIA has identified many, but certainly not all, of the regulations affecting wireless carriers that are no longer necessary in the public interest and must be repealed or modified under the biennial review required by Section 11.

Respectfully submitted,

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